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Republican Study Committee

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Legislative Bulletin……………………………………December 2, 2009

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H.R. 3570 - Satellite Home Viewer Update and Reauthorization Act *(Conyers, D-MI)*

Order of Business: The bill is scheduled to be considered on Wednesday, December 2, 2009 under a motion to suspend the rules and pass the bill.

Summary: Under current law, satellite and cable television carriers pay royalties to the Copyright Office so they can transmit signals to subscribers. The Copyright Office distributes those fees to owners of copyrights. H.R. 3570 would extend, through December 31, 2014, the requirement that satellite companies pay royalty fees to owners of copyrighted material for retransmitting that material to their subscribers. The rates can be set by voluntary agreement, or it can be set by a Copyright Royalty Judges.

Among other things, the bill would also:

- Increase the royalty rates that cable companies pay to use copyrighted material;
- Eliminate the requirement that copyright fees be paid on revenue from subscribers that do not actually receive copyrighted material (also know as the "phantom signal" issue);
- Authorize the Copyright Office to charge filing fees to satellite and cable operators to offset the cost of the royalty program;
- Increase penalties for rule violations;
- Require the Copyright Office to develop new regulations allowing for auditing of reports to the Copyright Office; and
- Require that the Federal Communications Commission develop a way to determine which households are eligible for copyright-protected satellite because of the switch to digital broadcasting.

Additional Background: The distant signal satellite license, codified in 17 U.S.C. § 119, was first enacted in 1988 as part of the Satellite Home Viewer Act (SHVA). The license is temporary and applies to the retransmission of both distant network and superstation signals. Congress has renewed the distant signal satellite license numerous times in previous years. The § 119 distant signal license is slated to expire on December 31, 2009.

The Satellite Home Viewer Act of 1988 was originally intended to provide a temporary mechanism for clearing the rights to copyrighted television broadcast programming to help grow direct-to-home satellite industry as an effective competitor to cable.

The Act was originally intended to provide a lifeline service to households that could not receive certain local broadcast signals over the air. The Act permits satellite carriers to retransmit a local network signal to the households in the designated market area (DMA) where the signal originated. If a satellite carrier chooses to provide the signal of a local broadcast station in a DMA, it must offer the signal of all network channels in that DMA.

Congress intended this to be an *interim* statutory solution that will allow carriers of broadcast signals to serve home satellite antenna users until marketplace solutions to this problem can be developed. Some members have expressed concern that the legislation "resuscitates, broadens and extends the license rather than accelerating its demise." Additionally, opponents of the Act expressed concern this issue undermines our ability to protect intellectual property rights.

Currently, it is estimated that one million subscribers receive distant-network programming under the authority under section § 119. Today, satellite carries offer 'local into local' service to for 97% of the nation. However, markets continue to exist where satellite providers chose not to offer local service due to low population densities or economic decisions.

Committee Action: The bill was introduced on September 15, 2009 and referred to the House Committee on the Judiciary. The bill was marked up and reported out of Committee, as amended, by a vote of 34-0, on October 28, 2009.

Administration Position: No Statement of Administration Policy is provided.

Cost to Taxpayers: CBO estimates that enacting the bill would increase revenues by $633 million over the 2010-2019 period. With higher royalty collections, the payments to copyright owners (including interest earnings) also would increase, resulting in an **estimated increase in direct spending of $725 million over the 2010-2019 period.** Thus, the net impact on the federal budget would be an increase in the deficit of $92 million over the over the same period. That net increase over the 10-year period reflects the payment of interest, which accrues during the period the royalties are held by the Copyright Office, in addition to amounts collected in royalties.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: According to CBO, "H.R. 3570 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on satellite carriers, cable carriers, broadcasters, and copyright holders. Based on information from industry sources and the Copyright Office, CBO estimates that the aggregate cost of complying with the mandates would not exceed the annual thresholds established in UMRA for intergovernmental or private-sector mandates ($69 million and $139 million in 2009, respectively, adjusted annually for inflation)."

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R.3570 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Constitutional Authority: Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clauses 3 and 8 of the Constitution.

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